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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/556,481	11/14/2005	Christopher Malyszewicz	76241.010500	1232

7590
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06/02/2009

EXAMINER

HARDEE, JOHN R

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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06/02/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/556,481	Applicant(s) MALYSZEWICZ, CHRISTOPHER	
	Examiner JOHN R. HARDEE	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35,40,41,43,53-64,66 and 68-72 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 35,40,41,43,53-64,66 and 68-72 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 6, 2009 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 40 and 41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims depend from cancelled claim 38.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 35, 40, 41, 43, 53-64, 66 and 68-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eggensperger et al., US 5,276,047 in view of Ofusu-Asante et al., US 6,387,856. . The Eggensperger reference discloses the use of alkylated

Art Unit: 1796

polyamines as shown in the abstract for inclusion in surfactants, detergents and cleansing and polishing agents. R is a straight or branched alkyl or alkylene radical of 10-14 carbons, n and m are non-zero, and $n+m = 4-12$. Use of animal or vegetable feedstocks comprising a mixture of chain lengths is notoriously common in the surfactant field. The person of ordinary skill in the surfactant art would fairly infer that R could be a mixture of chain lengths of 10-14 carbons. Note the use of lauryl dipropylene triamine in the examples. This is applicant's claimed amine, wherein R is a linear 12-carbon chain. Suitable solvents include low molecular weight univalent (monoprotic) alcohols (col. 2, lines 6+), making the use of mixtures of such alcohols obvious. Determination of the solvent-effective amount of disclosed solvents amounts to ordinary experimentation, as does determination of the cleaning-effective amount of the disclosed cleaner. The solvents act as wetting agents, and the amine has surfactant properties. The reference discloses dilution of the compositions for addition to other compositions (col. 3, lines 19+). Determination of the cleaning-effective amount of a disclosed cleaning agent, where dilution is disclosed, amounts to routine optimization. Addition of a halogen is not disclosed.

Ofusu-Asante teaches that antimicrobial compositions for manual dishwashing may comprise 0.001-2% of iodine atoms complexed with amphoteric surfactant (abstract). The compositions are disclosed as stable at a pH of 7-10, implying the use of a buffer to stabilize pH. It would have been obvious at the time that the invention was made to incorporate the iodine-amphoteric complex of Ofusu-Asante into the hard surface cleaning compositions of Eggensperger, because Eggensperger discloses at

col. 3, lines 5-6 that other disinfectants may be added to the compositions disclosed therein, and Ofusu-Asante teaches iodine-amphoteric complexes for use in hard surface cleaning compositions such as manual dishwashing detergents. Regarding claim 68, the claim is drawn to simple mixing, which is afforded little patentable weight. Language drawn to anti-viral, anti-fungal, etc. compositions, as well as binding of DNA and encapsulation recite inherent properties and intended use and are afforded little patentable weight.

Response to Arguments

6. Applicant's arguments filed May 6, 2009 have been fully considered but they are not persuasive. Applicant argues that the person of ordinary skill would not have used the halogen complexes of the '856 reference in the compositions of the '047 reference because doing so would necessitate pre-mixing of iodine with an amphoteric surfactant, that many disinfecting components are available which do not require premixing, and that a person of ordinary skill in the art would not look to complicate the production process in this way. This is not persuasive because premixing is not particularly complicated or expensive—any mixing of two ingredients prior to their combination being mixed with any other ingredients amounts to premixing. In addition, the '856 teaches that the disclosed iodophor complexes provide antimicrobial activity against bacteria, viruses, parasites and fungi (col. 3, lines 46+). This disclosure of the merits of iodophors is a strong motivation to make use of them. Applicant is correct that there are many disinfecting components available, and there is no specific guidance to the use of

Art Unit: 1796

iodophors in the primary reference, but such is not necessary to construct a prima facie case of obviousness.

Applicant further argues that the amounts of surfactant in the two references do not overlap. This is not persuasive because the examiner has not advocated a physical mixing of the surfactant compositions of the two references. The '856 reference is only relied upon for its disclosure of an iodine based disinfectant which is useful for hard surface cleaners. Applicant also argues that the Eggensperger reference does not disclose the addition of amphoteric surfactants. This is not persuasive because the reference does motivate the addition of disinfectants, so addition of a known disinfectant which comprises an amphoteric is obvious.

Applicant further argues that the '047 reference only discloses compositions comprising high amounts of alcohol. This is not persuasive because it is a mischaracterization of the disclosure of the reference. The cited passage provides a non-exclusive teaching of 25-40% of a glycol containing solvent. Ethanol and propanol, while their use is motivated by the reference, are not glycols. Any part of that 25-40%, but not all of it, may comprise ethanol and/or propanol, as long as a glycol is present as well.

Regarding claim 64, the examiner has no way of determining whether or not a composition will rupture membranes, cleave DNA or bind DNA, and the examiner need not do so in order to make a prima facie case of obviousness.

Art Unit: 1796

7. Applicant's submission of a preliminary amendment to the specification is acknowledged. This amendment is present in the electronic file. It should be incorporated into any patent resulting from the present prosecution.
8. Applicant's amendments overcome the double patenting rejections made in the previous office actions.
9. Applicant's efforts to further prosecution are appreciated. This action is NOT FINAL.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Mr. Harold Pyon, may be reached at (571) 272-1498.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Application/Control Number: 10/556,481

Page 7

Art Unit: 1796

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/John R. Hardee/
Primary Examiner
May 28, 2009